IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.MC.No. 902 of 2007()

AGAINST THE ORDER DATED / / IN IN MC 33/2007 IN CC.44/2002 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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PETITIONER:

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1. MANJUNATHA, AGED 35 YEARS, S/O.RAMA, RESIDING AT CHAKKIGUDDE HOUSE, UDAYAVAR, MANJESWARA POST, KASARGOD TALUK, KASARGOD DISTRICT.

2. GANESH, AGED 35 YEARS, S/O.VENKAPPA, RESIDING AT UDYAVAR, MANJESWARA POST, KASARGOD TALUK, KASARGOD DISTRICT.

3. PURUSHOTHAMA, AGED 40 YEARS, S/O.DEVAPPA, RESIDING AT RAILWAY STATION, MANJESWARA, UDYAVAR, KASARGOD DISTRICT.

BY ADV. SRI.T.MADHU

RESPONDENTS:

THE STATION HOUSE OFFICER, MANJESWAR POLICE STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 902 OF 2007

Dated this the 28th day of March, 2007

ORDER

The petitioners are the witnesses cited by the prosecution in a criminal case. They were bound over by the learned Magistrate on execution of a bond to appear before the learned Magistrate on a later date. They did not appear before the learned Magistrate as undertaken by them in the bond executed in favour of the court. The learned Magistrate thereupon initiated proceedings under Sec.446 of the Cr.P.C. The impugned order has thus been passed under Sec.446 of the Cr.P.C. directing payment of an amount of Rs.2,000/- each. Balance amount was remitted.

2. The petitioners have come to this Court with this petition under Sec.482 of the Cr.P.C. to challenge the said order. The learned counsel for the petitioners submits that the impugned order is patently wrong and results in miscarriage of justice.

3. I am unable to agree. Notwithstanding the fact that the Section has been wrongly quoted by the learned Magistrate as "Sec.446A of the Cr.P.C." and the fact that the learned Magistrate has used an inelegant and inappropriate expression "fined Rs.2000/-", the fact remains that the impugned order is one imposing a penalty under Sec.446 of the Cr.P.C. Such an order is amenable to challenge under Sec.449 of the Cr.P.C. I find no reason to invoke the powers under Sec.482 of the Cr.P.C. to interfere with such an order.

4. In the result, this Crl.M.C. is dismissed. Needless to say that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioners to take up all appropriate and relevant contentions in such appeal to be filed under Sec.449 of the Cr.P.C. I have only chosen to hold that the powers under Sec.482 of the Cr.P.C. do not deserve to be invoked.

Sd/-

(R. BASANT, JUDGE)

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//true copy// **P.S. To Judge**